

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1607 of 1993

with

Civil Application No.2915 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KISHORSONH R ZALA

Versus

RANGE FOREST OFFICER  
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Appearance:

MRS DT SHAH for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 15/06/1999

ORAL JUDGEMENT

The petitioner was employed with the respondents from 1.12.1980. The petitioner was not continued in employment after 10.12.1984. Hence, the petitioner approached the Government for making a reference to the Labour Court. The reference was numbered as Reference L.C. No.141 of 1989 and renumbered as 1137 of 1989 before the Labour Court at Surendranagar. The petitioner contended that the termination order was illegal and further contended that in any view of the matter, after terminating the petitioner's services, the respondent had employed other persons, Bai Fatuba Haruba and Tapuba/

2 The respondents filed their written statement before the Labour Court stating that the petitioner had worked for only 232 days from 1.12.1980 to 31.8.1981 and therefore there was no question of violation of Section 25-F of the Industrial Disputes Act, 1947. It was further contended that the petitioner had left employment on his own. The petitioner examined himself as a witness but no oral or documentary evidence was led on behalf of the respondents. The Labour Court found that since the petitioner had not completed 240 days service, there was no question of violation of the provisions of Section 25F of the Industrial Disputes Act but since the respondent had employed other persons after terminating the services of the petitioner, there was violation of the provisions of Section 25G and 25H of the ID Act. The Labour Court therefore passed the award directing the respondents to reinstate the petitioner in service but the petitioner's prayer for back wages was not granted.

3 In the present petition the petitioner has challenged the aforesaid award of the Labour Court insofar as the Labour Court has not granted the petitioner continuity of service.

4 The respondents are served but none appears on behalf of the respondents.

5 The learned counsel for the petitioner submits that once the Labour Court found that the action of the respondents in not giving the employment was violative of petitioner's rights under section 25G and 25H of the I.D.Act. The Labour Court ought to have granted the petitioner the benefit of continuity of service and that the Labour Court has not given any reason for not giving the petitioner continuity of service. It is further submitted that the reasons given by the Labour Court for denying the back wages to the petitioner cannot be relied upon for denying the petitioner the benefit of continuity of service.

6 Since the Labour Court has passed the award in favour of the petitioner only on the ground that there was violation of provisions of Section 25G and 25H of the I.D. Act, the petitioner could not have been granted the continuity of service with effect from the date of termination of his services but the Labour Court ought to have considered the question as to why the petitioner should not be given the benefit of continuity of service from the date when persons like Fathuba Haruba and Tapuba were employed by the respondents in place of the petitioner.

7 The petition is accordingly allowed. The judgement and award dated 8th May 1992 passed by the Labour Court, Surendranagar, in Reference No.1137 of 1989 will stand modified to the extent that the petitioner shall be reinstated with continuity of service with effect from the date on which Bai Fathuba Haruba and Tapuba were employed by the respondents in place of the petitioner. The respondents shall give the petitioner continuity of service with effect from the date on which the aforesaid persons were first employed. Rule is made absolute to the aforesaid extent only.

8 In view of the disposal of the main matter, no order is required to be passed on the civil application. The same accordingly stands disposed of.

(M.S. SHAH, J.)

(mohd)